

Kenai National Wildlife Refuge  
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### **COMPATIBILITY DETERMINATION**

*The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd-668ee) states that “The Secretary is authorized, under regulations as [s]he may prescribe, to – (A) permit the use of any area within the [National Wildlife Refuge] System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access wherever [s]he determines that such uses are compatible’ and that “... the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety.” A compatible use is defined as “A proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the national wildlife refuge.” The compatibility determination is to be a written determination signed and dated by the Refuge Manager and Regional Chief of the National Wildlife Refuge System, signifying that a proposed or existing use of a national wildlife refuge is a compatible use or is not a compatible use.*

*Applicable compatibility regulations in 50 CFR Parts 25, 26, and 29 were published in the Federal Register October 18, 2000 (Vol. 65, No. 202, pp 62458 – 62483).*

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**Use:** Natural Resource Gathering

**Refuge:** Kenai National Wildlife Refuge

**Establishing and Acquisition Authorities:** The Refuge was first established as the Kenai National Moose Range by Executive Order 8979 on December 16, 1941. The boundaries were modified, purposes expanded, and name changed to Kenai National Wildlife Refuge under the provisions of the Alaska National Interest Lands Conservation Act (ANILCA) on December 2, 1980 (Public Law 96-487 Stat. 2371).

**Refuge Purposes:** The Executive Order purpose was primarily to “... protect the natural breeding and feeding range of the giant Kenai moose on the Kenai Peninsula, Alaska...”. ANILCA purposes for the Refuge include: “(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to moose, bear, mountain goats, Dall sheep, wolves and other furbearers, salmonids and other fish, waterfowl and other migratory and nonmigratory birds; (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; (iii) to ensure to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity with the refuge; (iv) to provide in a manner consistent with subparagraphs (i) and (ii), opportunities for scientific research, interpretation, environmental education, and land management training; and (v) to provide, in a manner compatible with these purposes, opportunities for fish and wildlife oriented recreation.” The Wilderness Act of 1964 (Public Law 88-577) purposes are to secure an enduring resource of wilderness, to protect and preserve the wilderness character of areas within the National Wilderness Preservation System,

and to administer this wilderness system for the use and enjoyment of the American people in a way that will leave them unimpaired for future use and enjoyment as wilderness.

Policy (FWS 603 2.8) directs that pre-ANILCA purposes remain in force and effect, except to the extent that they may be inconsistent with ANILCA or the Alaska Native Claims Settlement Act, and that such purposes only apply to those areas of the Refuge in existence prior to ANILCA. The Executive Order purpose to protect Kenai moose, however, is treated as complimentary to the broader ANILCA purpose of conserving fish and wildlife populations; therefore, no special attention is given the Executive Order purpose in this compatibility review process.

Sec. 4(a) of the Wilderness Act provides that the purposes of the Act are to be within and supplemental to the purposes for which national wildlife refuges are established and administered. These purposes are applied to the approximately 1.3 million acres of Congressionally designated wilderness within the Refuge. While these purposes do not apply to the remaining approximately 700,000 acres of Refuge lands that are not designated as wilderness, we must consider the effects of uses on any Refuge lands that might affect the wilderness areas.

**National Wildlife Refuge System Mission:** The National Wildlife Refuge System Mission is “To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

**Description of Use:** Collection of natural resources in this compatibility determination includes the personal/non-commercial surface collection, by hand (including by handheld gold pans) of rocks and minerals (except the collection of silver, platinum, gemstones and fossils); antler collecting as may be formally authorized through future regulatory change; and berries/mushrooms/edible plants as may be formally authorized through future regulatory change.

Public recreational activities, including the removal of natural resources, may only be authorized if found to be compatible with the Refuge purposes. Some collection of natural resources is currently authorized, such as the use of timber and edible plants as specifically described, for subsistence purposes. Such authorizations do not apply to most traditional users at Kenai National Wildlife Refuge due to few being qualified rural residents.

Gold panning and surface collection of most rocks and minerals for personal recreational use is authorized under 50 CFR 36.31 (b); however, the practice is uncommon and it is rare to encounter a visitor gold panning or specifically looking for rocks to collect.

The removal of objects of antiquity and search and removal of other values objects without a permit is prohibited (50CFR 27.62 and 27.63). It is also illegal to remove any plant or animal (including parts) from a national wildlife refuge without a permit (50 CFR 27.51). That said, it is not uncommon for Kenai NWR visitors to collect shed moose or caribou antlers or to pick berries or mushrooms for personal use. Discretionary law enforcement has allowed these use generally, unless quantities have been excessive. Proposed regulatory changes in the revised Comprehensive Conservation Plan would officially authorize unlimited personal use of berries, mushrooms, and other edible plant products, and limited collection for personal use of naturally shed moose and caribou antlers. Commercial collections are not included in this compatibility determination and will not be authorized unless found to be compatible under a separate review, are covered under the conditions of a Special Use Permit, and meet the “must contribute” standard of 50 CFR 29.21 (where the use of natural resources for commercial purposes must not

only be found to not materially interfere with or detract from meeting Refuge purposes, but also must be found to contribute to meeting the purposes).

The collection of fire wood, timber for personal use, and the collection of Christmas trees is covered within the compatibility determination addressing forest products use.

**Availability of Resources:** If new regulations are developed to officially authorize the collection of shed antlers and plant materials, some public meetings and outreach and education efforts will need to be undertaken. These should not be significant and can largely be included with efforts related to the Comprehensive Conservation Planning process. Levels of use currently are low for these activities and level of impacts anticipated is also low; therefore, current administrative funding levels should adequately cover costs of management. Some additional enforcement may be warranted in some cases, particularly if there is poor compliance with the collection of antlers for profit. Current levels of enforcement can not be expected to reasonably patrol the 2 million acres of Refuge for this use; however, targeted spot checks should be adequate to reasonably address the concern.

**Anticipated Impacts of the Use:** Gold panning occurs at such low levels and is regulated in a manner as such that impacts of the use are currently negligible. Likewise, the collection of rocks and minerals for personal use has no noticeable impact.

Current personal use of edible plants and fruits is also of little concern. Over time, if areas become popular for berry picking they may become trampled and some berry patches could be reduced as to not be of use to wildlife at that specific site, but given the overall size of the Refuge and distribution of berries and other edible plant materials, no significant impacts are envisioned at current or near term future use levels, whether the activity is specifically authorized or not.

Collection of antlers can have impacts in at least two ways. First, shed antlers provide an important natural source of salts and minerals to small mammals, including squirrels, voles, and porcupines. Second, the removal of shed antlers detracts from the experience of other visitors who may enjoy the discovery of an antler and the interpretive value that the antler may have. A shed antler, with a nice backdrop, is also a popular subject for both amateur and professional photographers.

Though the collection of antlers has recognized impacts, the level of such impacts is unlikely to be significant if well regulated, except perhaps in the most accessible and popular sites people may search.

**Public Review and Comment:** This compatibility determination has been prepared while revising the Refuge's Comprehensive Conservation Plan and Environmental Impact Statement. Future revisions can be accomplished outside of this planning process if deemed necessary and would be completed with public notice and involvement. Legal notice of the draft compatibility determination was published in the Anchorage Daily News and the Kenai Peninsula Clarion on February 25, 2007 which initiated a 45-day public comment period. The notice was also posted on a bulletin board at the Refuge headquarters for the same time period, made available starting February 28, 2007 on a list server [fws-akrefugecompatibility@lists.fws.gov](mailto:fws-akrefugecompatibility@lists.fws.gov) to 137 addresses, and made available on the Regional Refuge Planning web site at <http://alaska.fws.gov/nwr/planning/completed.htm>.

Comments on some or all of the (15) compatibility determinations were received from: The State of Alaska, The Wilderness Society, The National Wildlife Refuge Association, Friends of Kenai

National Wildlife Refuge, Alaska Trappers Association, Defenders of Wildlife, Kenai Field Office (FWS), and The Humane Society of the United States.

The State of Alaska supported the compatibility finding but questioned the basis of a future regulation and suggested that if the Refuge believes that a regulation is desired, then they recommend a region-wide regulation to ensure consistency for the public. We agree and will pursue a more broad regulatory fix as applicable.

**Determination (check one below):**

\_\_\_\_\_ Use is Not Compatible

  X   Use is Compatible With Following Stipulations

**Stipulations Necessary to Ensure Compatibility:** Commercial collection of natural resources is prohibited unless covered under a separate and specific compatibility determination and a Special Use Permit. Adequate closure and restriction mechanisms exist to address any problem areas with edible plant use in the unlikely event such concerns arise. Collection of shed antlers is proposed to be limited in scope (annual limit on collection) that should minimize concerns over impacts of the collection. Antlers are renewable resources that already disappear naturally over time and reasonable limits should not unnecessarily impact wildlife or visitors. The collection of gold and other minerals is limited to surface collection or by use of a pan only. Additionally, surface collection methods which may result in disturbance of ground surface, such as the use of shovels, pickaxes, sluice boxes, and dredges are prohibited.

**Justification:** The natural resource collection uses described are well regulated and minor in scope and effect. None of the current or projected near future conditions for the uses covered in this compatibility determination approaches the threshold of compatibility.

**Signature (Refuge Manager):** /s/ Robin L. West 6/13/07  
Signature and Date

**Concurrence (Regional Chief):** /s/ Todd J. Logan 8/14/07  
Signature and Date

**Mandatory 10-year Re-evaluation Date:**   8/14/17